

**REMARKS**

Claims 1-7 have been examined. Claim 7 has been rejected under 35 U.S.C. § 101 and claims 1-3, 6 and 7 have been rejected under 35 U.S.C. § 102(e). Also, the Examiner has indicated that claims 4 and 5 contain allowable subject matter but are objected to as being dependent upon a rejected base claim.

**I. Rejection under 35 U.S.C. § 101**

The Examiner has rejected claim 7 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Accordingly, Applicant has amended claim 7 in a manner believed to overcome the rejection.

**II. Rejections under 35 U.S.C. § 102(e) in view of U.S. Patent No. 5,748,773 to Tashiro et al. (“Tashiro”)**

The Examiner has rejected claims 1-3, 6 and 7 under 35 U.S.C. § 102(e) as allegedly being anticipated by Tashiro.

**A. Claim 1**

Applicant submits that claim 1 is patentable over the cited reference. For example, claim 1 recites, “a number-of-color detector that detects a number of colors by regarding a number of luminance values in the luminance distribution as the number of colors; and an image discriminator that discriminates a type of image based on the number of colors.”

Applicant submits that where the luminance levels of any pixels are the same value, it is highly possible that those pixels are of the same color. In the present invention, the number of colors used, which correspond to the luminance values, is counted. On the contrary, Tashiro detects how many luminance signal *levels*, which are relatively the same level, are used per each level. Thus, Tashiro is directed towards detecting a different feature and fails to disclose counting the number of colors used in the manner set forth in claim 1. In other words, the detection of the number of colors used, by regarding the number of luminance values in luminance distribution, is not taught or suggested in Tashiro.

At least based on the foregoing, Applicant submits that claim 1 is patentable over the cited reference.

**B. Claims 2 and 3**

Since claims 2 and 3 are dependent upon claim 1, Applicant submits that such claims are patentable at least by virtue of their dependency.

**C. Claims 6 and 7**

Since claims 6 and 7 contain features that are analogous to the features recited in claim 1, Applicant submits that claims are patentable for at least analogous reasons as claim 1.

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. Appln. No.: 10/710,031

Attorney Docket No.: Q82120

### III. Allowable Subject Matter

As set forth above, the Examiner has indicated that claims 4 and 5 contain allowable subject matter. By this Amendment, Applicant has canceled claim 4, without prejudice or disclaimer.

### IV. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

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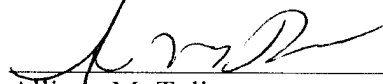
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